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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 463

CHARLES JACKSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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(34,594)

INDEX.

Subject Index.

	Page
Petition for a writ of certiorari	1
Summary statement of the matter involved	1
Reasons relied on for the allowance of the writ	2
Prayer for writ	3
Brief in support of petition for writ of certiorari	5
I. The opinions of the courts below	5
II. Jurisdiction	6
III. Statement of the case	6
IV. Specification of errors	7
V. Argument	8
Summary of argument	8
Point A. Conflict with prior Federal and State court decisions	8
Conclusion	12

Table of Cases Cited.

Gianakouras v. United States, 33 Fed. (2d), 936	12
Jackson v. United States, 24 Fed. (2d), 981	12
Standard Oil Co. v. United States, 267 U. S., 76	2, 8, 10
United States v. Jackson, 34 Fed. (2d), 241	5

Table of Statutes Cited.

Section 347, Title 28, U. S. C	6
Section 445, Title 38, U. S. C	1, 6
Act of September 2, 1914, C. 293 (28 Stat., 711-712)	8
Act of June 12, 1917, C. 26 (40 Stat., 102-105)	9
Act of October 6, 1917, C. 105 (40 Stat., 398)	9

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PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Charles Jackson respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

The question involved in this petition is whether or not the Circuit Court of Appeals erred in reversing a judgment allowing interest in an action at law upon a policy of war risk insurance under Sec. 445, Title 38, U. S. C. The plaintiff, (the petitioner herein) recovered judgment for the amount named on the face of the policy and the trial court adjudged that the plaintiff

recover the sum of $57.50 for each month from October 30, 1918, to the date of such judgment, to wit, February 16, 1928, together with interest at the rate of six per cent per annum on each of such unpaid installments, and that the judgment bear interest at the rate of six per cent per annum from its date until paid. The United States appealed from this judgment and assigned as a ground of error, *inter alia,* that the court erred in awarding interest to the appellee on the unpaid installments and on the judgment. The Circuit Court of Appeals reversed the judgment and held that the trial court erred in allowing interest. The petitioner contends that he is entitled to interest and the only question involved in this petition is whether or not the petitioner is entitled to interest on unpaid installments admitted to be due under the judgment and to interest on the judgment.

B.

Reasons Relied on for the Allowance of the Writ.

I.

The Circuit Court of Appeals has decided an important question of federal law in a way probably in conflict with the applicable decision of this Court in the case of Standard Oil Company *vs.* United States, 267 U. S. 76; 45 S. C. 211; 69 L. ed. 519.

II.

The Circuit Court of Appeals has decided an important question of federal law incidental to every

action upon every policy of war risk insurance which has not been, but which should be, setled by this Court. Counsel for the petitioner are advised by the office of the United States Attorney for the District of Kansas that there is no case now pending in this Court bearing upon the question involved herein, and that this cause is a precedent upon which the determination of other war risk insurance cases in the Tenth Circuit depends.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 20, United States of America, Appellant, *vs.* Charles Jackson, Appellee, and that the said judgment of the United States Circuit Court of Appeals for the Tenth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

CHARLES JACKSON,
By THOMAS AMORY LEE,
TURNER W. BELL,
THOMAS AMORY LEE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 463

CHARLES JACKSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the District Court of the United States for the District of Kansas is reported in Jackson *vs.* United States, 24 Fed. (2d) 981 (R. 17).

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit in United States *vs.* Jackson is reported in 34 Fed. (2d) 241 (R. 39).

II.

Jurisdiction.

1. The date of the judgment to be reviewed is August 2, 1929 (R. 44).

A motion by this petitioner for an extension of time within which to file a petition for a rehearing was filed and denied on September 11, 1929, and a stay of mandate granted to November 1, 1929 (R. 45).

2. The petitioner claimed interest in the trial court on unpaid installments of $57.50 each due under his policy of war risk insurance and six per cent simple interest upon the judgment from the date of the judgment until paid. The trial court gave judgment for the petitioner and allowed such interest (R. 29). The United States Circuit Court of Appeals for the Tenth Circuit held that the trial court erred in allowing interest and reversed the cause (R. 39).

3. The jurisdiction of this Court is invoked under Sec. 347, Chapter 9, Title 28, U. S. Code (Sec. 240 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938).

4. It is believed unnecessary to refer to any cases in support of the jurisdiction.

III.

Statement of the Case.

This was an action at law upon a policy of war risk insurance under Sec. 445, Title 38, U. S. C. (R. 2).

The trial court rendered judgment for the plaintiff (the petitioner herein) and allowed six per cent simple interest on each of the unpaid installments of $57.50 per month recovered in said judgment, and six per cent simple interest upon the judgment from the date of the order of the judgment until paid (R. 29). The United States appealed and assigned as error (*inter alia*) the allowance of interest (R. 16). The United States Circuit Court of Appeals for the Tenth Circuit held that the trial court erred in allowing interest and reversed the cause (R. 39). The only question involved in the petition for the Writ of Certiorari is whether or not the United States Circuit Court of Appeals for the Tenth Circuit erred in reversing the judgment of the trial court for having allowed interest upon each of the unpaid installments of $57.50 admitted to be due under the judgment and six per cent simple interest upon the judgment from the date of the order of judgment until paid (R. 29).

IV.

Specification of Errors.

1. The United States Circuit Court of Appeals for the Tenth Circuit erred in finding and holding that the trial court erred in awarding interest on the unpaid installments of war risk insurance due under the judgment.

2. The United States Circuit Court of Appeals for the Tenth Circuit erred in finding and holding that the trial court erred in awarding interest on the judgment from the date of its rendition until paid.

V.

ARGUMENT.

Summary of Argument.

A.

The decision below is, we believe, in conflict with the decision of this Court awarding interest upon a policy of marine insurance, issued under practically the same statute, in Standard Oil Company *vs.* United States, 267 U. S. 76, 45 S. C. 211, 69 L. ed. 519.

A.

Conflict With the Prior Decision of This Court.

We believe that the decision below is in conflict with the decision of this Court in Standard Oil Company *vs.* United States, 267 U. S. 76, 45 S. C. 211, 69 L. ed. 519, which allowed interest on a judgment against the United States on a policy of marine insurance issued under the original insurance statute creating the Bureau of War Risk Insurance and directing it to insure American vessels, their freight, passage money and cargoes against war risk (Act of September 2, 1914, Ch. 293, 38 Stat. 711-712, Comp. St. Sec. 514 E, 9 Fed. St. Ann. 2nd ed. p. 1299). The preamble of the 1914 Act recited that the foreign commerce of the United States was greatly impeded and endangered through the absence of adequate facilities for the insurance of American vessels and their cargoes against

the risk of war. Private insurers did not care to carry the risk of vessels in the submarine infested seas, except at a prohibitive cost. The Act therefore established the Bureau of War Risk Insurance as a war measure and for the express purpose of relieving American shipping of the almost prohibitive cost of commercial marine insurance. The Government, as a temporary war measure, thus provided for marine insurance by the United States at rates much less than commercial rates. The Act is referred to as an act to provide war risk insurance (Sec. 9) and is entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department." The United States having entered the World War, the Act of June 12, 1917, Chapter 26, 40 Stat. 102-105, Comp. St. Sec. 514*ee*, 9 Fed. St. Ann. 2nd Ed. p. 1303, extended the insurance not only to vessels, but also to masters, officers, crews, and their personal effects (Sec. 2). Private insurers now did not care to carry the risk of soldiers in battle or sailors at sea, except at prohibitive cost, and accordingly the Act of October 6, 1917, Chapter 105, 40 Stat. 398, Comp. St. 514*kk*, 9 Fed. St. Ann., 2nd Ed., p. 1305, again amended the original insurance Act and provided for additional divisions of military and naval insurance in the Bureau of War Risk Insurance so as to insure members of the military and naval forces, etc. This Act was entitled "An Act to amend an Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department' approved September 2, 1914, and for other purposes."

The policies involved in the Standard Oil Company case and in this case were issued in accordance with almost identical statutory enabling provisions. Section 3 of the marine insurance act provided for the issuance of a form of war risk insurance policy without going into details as to the form of the policy. Section 4 provided for the enactment of rules and regulations. Section 5 provided that suit might be brought in the event that there was a disagreement between the United States and the assured. There were similar provisions in the amendment providing for the insurance for members of the military and naval forces. Section 301 provided for "usual forms of insurance" and referred to the policy as a "contract of insurance." (See Sec. 512, Title 38, U. S. Code.) Section 5 of the war risk insurance act provided for the enactment of rules and regulations. Sec. 19 of the war risk insurance act authorized suit in the event of disagreement. The same Bureau of War Risk Insurance was to issue policies, receive the premiums and make the rules and regulations. In neither statute did Congress go into detail as to the terms of the policies to be issued.

If the Government entered into the business of insuring in the one case as this Court has said in Standard Oil Company *vs.* United States, *supra,* it surely did so in the other case. The Government undertook the business of insuring for the same reasons, as a war measure and because commercial insurance was too expensive, in the one case for the merchant marine of the United States and in the other case for the soldiers and sailors of the United States. The United

States was just as surely and just as truly in the insurance business under the war risk insurance policy as it was under the marine insurance policy. The benevolence to the soldier and to the sailor referred to in the opinion by the court below in this case is no greater than, or no different from, the benevolence to the owners, masters, charterers, and crews of vessels under the marine insurance. It is argued that, although war risk insurance was a contract for which a premium was to be paid, it was not one entered into by the United States for gain—neither was the marine insurance. It too was entered into by the United States at a loss and as a war measure. The same relationship of benevolence referred to in White *vs.* United States, 270 U. S. 175 (at p. 180), as having been established by the Government at considerable cost to itself for the soldiers' good had already been established by the Government some three years prior by the original act creating the Bureau of War Risk Insurance under which the marine policy in the Standard Oil Company case was issued. We can not believe that Congress intended that a judgment on a marine policy in favor of the Standard Oil Company, or of any commercial concern, should bear interest, and that it did not intend that a judgment on a war risk insurance policy in favor of a soldier who lost his leg in battle should bear interest, both of them having been issued as war measures, by the same Bureau of War Risk Insurance under almost identical statutes, and neither one of them containing an express provision either for or against interest. If any possible distinction could

be made, it certainly should be made in favor of the dead or the mangled human being rather than the owner of the sunken vessel or captured cargo. If interest is not allowed in this case, it means that a sailor who was insured under the original Act will recover interest upon any judgment which he may recover upon his policy, whereas his soldier brother on the same vessel, injured at the same time by the same act of the enemy, but insured under the Act of October 6, 1917, will not receive interest. We do not believe that this was either the intent of Congress or will be the judgment of this Court.

The soldier who bought and paid for his war risk insurance is no more the pensioner of the Government than is the shipowner who bought and paid for the marine insurance which this Court has heretofore adjudged to have been a business contract subject to the ordinary incidents of business.

The arguments for the position of the petitioner herein are set forth with great force by Judge Hahn in Gianakouras *vs.* United States, 33 Fed. (2d) 936, an action in the District Court for the Northern District of Ohio, as well as in the opinion by Judge McDermott in the trial of the case at bar, reported in 24 Fed. (2d) 981, at page 987.

It is therefore respectfully submitted that the court below erred in disallowing interest, and that this case is one calling for the exercise by this Court of its supervisory powers in order that this important question of federal law incidental to every action on every policy of war risk insurance may be settled by this

Court in accordance with the prior applicable decision of this Court, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals of the United States for the Tenth Circuit and finally reverse it.

THOMAS AMORY LEE,
TURNER W. BELL,
Counsel for the Petitioner.